

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of John C. Povejsil¹

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on April 14, 2010, at the Office of Administrative Hearings in St. Paul, Minnesota. Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Respondent John C. Povejsil appeared on his own behalf.

Prior to the start of the hearing on April 14, 2010, counsel for the Department and Mr. Povejsil notified the Administrative Law Judge that they had reached a stipulation under which Mr. Povejsil agreed that he would not admit the allegations set forth in the Statement of Charges but would not contest them, and reserved the right to submit argument to the Commissioner regarding the appropriate sanction to be imposed against him. As a result, the April 14, 2010, hearing was cancelled and the OAH record was deemed closed as of that date. The terms of the agreement reached between the Department and Mr. Povejsil are reflected in this Report.

STATEMENT OF THE ISSUES

1. Did Respondent John C. Povejsil:
 - a. violate insurance laws subject to the Commissioner's authority, in violation of Minn. Stat. § 60K.43, subd. 1(2) (2008);
 - b. improperly withhold, misappropriate or convert money or property received in the course of doing insurance business, in violation of Minn. Stat. § 60K.43, subd. 1(4) (2008);
 - c. engage in fraudulent and dishonest practices demonstrating his untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 60K.43, subd. 1(8) (2008);

¹ Real Source Title, LLC; Minnetitle, LLC; A-1 Settlement Services; and Jason E. Fischer also were originally named as Respondents in this matter. On April 19, 2010, the Administrative Law Judge issued separate Findings of Fact, Conclusions and Recommendations as to those four parties. The Department located a more recent address for Mr. Povejsil and subsequently served him with an amended Notice of and Order for Hearing at that address. A new hearing date of April 14, 2010, was scheduled with respect to Mr. Povejsil. Accordingly, this Report addresses only the allegations relating to Mr. Povejsil.

- d. improperly withhold, misappropriate and convert monies belonging to others and engage in fraudulent and dishonest practices, in violation of Minn. Stat. § 72A.20, subd. 18 (2008);
 - e. fail to remit monies belonging to another, in violation of Minn. Stat. § 82.41, subd. 13(a)(11) (2008);
 - f. make material misrepresentations, in violation of Minn. Stat. § 82.41, subd. 13(a)(9) (2008);
 - g. make misrepresentations in order to induce the consummation of a real estate transaction, in violation of Minn. Stat. § 82.41, subd. 13(a)(10) (2008);
 - h. fail to properly maintain an escrow account, in violation of Minn. Stat. § 82.50, subd. 1 (2008);
 - i. convert monies that should have remained in the escrow account, in violation of Minn. Stat. § 82.50, subd. 5(d) (2008); or
 - j. sell insurance without an agency license, in violation of Minn. Stat. § 60K.32 (2008)?
2. Did Respondent dishonestly discharge his duties as a notary public in violation of Minn. Stat. § 359.12 (2008)?
3. If so, is Respondent subject to discipline and/or a civil penalty?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

- 1. Respondent John C. Povejsil holds a resident insurance producer license (No. 20238406) and is commissioned as a notary public (No. 20131655).
- 2. On March 16, 2010, the Department served an Amended Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges ("Amended Notice of Hearing") in this matter on Respondent at his address in St. Paul, Minnesota.²
- 3. The Amended Notice of Hearing indicated that the hearing in this matter would be held on April 14, 2010.³

² See Affidavit of Service by U.S. Mail attached to amended Notice of and Order for Hearing dated March 16, 2010.

³ Amended Notice of Hearing at 3.

4. Prior to the beginning of the hearing on April 14, 2010, the Department and Respondent notified the Administrative Law Judge that they had reached a stipulation. Under the stipulation, Respondent does not admit the allegations contained in the Statement of Charges but will not contest those allegations. The parties also stipulated that Respondent reserves the right to submit argument to the Commissioner regarding the appropriate sanction to be imposed against him. As a result, the April 14, 2010, hearing was cancelled.

5. Based on the stipulation entered into between the Department and the Respondent, the allegations contained in the Statement of Charges with respect to Respondent Povejsil are not admitted but are not contested. Those allegations are hereby incorporated into these Findings of Fact, with the understanding that Mr. Povejsil reserves his right to present argument to the Commissioner regarding what, if any, sanctions should be imposed.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Amended Notice of Hearing was proper, and the Department has complied with all relevant procedural legal requirements.

3. Respondent John C. Povejsil received notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

4. Respondent has entered into a stipulation with the Department under which he does not admit but will not contest the allegations set forth in the Statement of Charges included in the Amended Notice of Hearing. Accordingly, the allegations contained in the Statement of Charges with respect to the Respondent are taken as true.

5. Based upon the facts set forth in the Statement of Charges, Respondent violated insurance laws subject to the Commissioner's authority; improperly withheld, misappropriated or converted money or property received in the course of doing business; and engaged in fraudulent and dishonest practices demonstrating his untrustworthiness and financial irresponsibility, in violation of Minn. Stat. § 60K.43, subd. 1(2), (4), and (8) (2008).

6. Based upon the facts set forth in the Statement of Charges, Respondent improperly withheld, misappropriated and converted monies belonging to others and engaged in fraudulent and dishonest practices, in violation of Minn. Stat. § 72A.20, subd. 18 (2008).

7. Based upon the facts set forth in the Statement of Charges, Respondent made material misrepresentations, in violation of Minn. Stat. § 82.41, subd. 13(a)(9) (2008), and made false or misleading statements in order to induce the consummation of a real estate transaction, in violation of Minn. Stat. § 82.41, subd. 13(a)(10) (2008).

8. Based upon the facts set forth in the Statement of Charges, Respondent failed to remit monies belonging to another, in violation of Minn. Stat. § 82.41, subd. 13(a)(11) (2008); failed to properly maintain escrow accounts, in violation of Minn. Stat. § 82.50, subd. 1 (2008); and converted monies that should have remained in escrow accounts, in violation of Minn. Stat. § 82.50, subd. 5(d) (2008).

9. Based upon the facts set forth in the Statement of Charges, Respondent dishonestly discharged his duties as a notary public in violation of Minn. Stat. § 359.12 (2008).

10. The imposition of disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner of Commerce discipline, censure, and/or impose an appropriate civil penalty against Respondent John C. Povejsil.

Dated: April 30, 2010

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Reported: Default (no digital recording)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.